IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Criminal Writ Petition No.1084 of 2005

Kausar Developer & Anr. .. Petitioners.

Vs.

Union of India & Anr. .. Respondents

--

Mrs.Yasmin E.Tavaria for petitioners.

Shri D.N.Salvi for Respondent Nos.1 and 2.

--

CORAM: V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATE : 13th JULY, 2005

P.C.

1. By this petition, the petitioners have made the following prayers.

"(i) That Hon'ble Court may be pleased to issue Writ of Certiorari or Mandamus or such other Writ, Order or Direction in the nature of Certiorari or Mandamus under Article 226 and/or 227 of the Constitution of India against the Respondent No.2 and call for the records and proceedings of the said

case and after perusing the same and looking into the legality and propriety of impugned order No.CA/MUM/SAFEMA/30/2004-05 dated 11-02-2005, at Exhibit "F" hereto passed by the Respondent No.2 the same be quashed and set aside.

(ii) That this Hon'ble Court without prejudice and in the alternative may consider remanding the case for fresh determination in accordance with law to the Competent Authority, SAFEMA/NDPS, Mumbai.

(iii) That pending the hearing and final disposal of the Petition, all further proceedings under Section 19 of SAFEMA, 1976 be stayed until further orders.

(iv) Ad-interim and interim reliefs in terms of prayer clause (i) and/or (ii) above be granted.

(v) That such further and other reliefs as the nature and circumstances of this

case may require in the interest of justice be granted."

Notice was issued to the respondents as to why petition should not be admitted. To that, Affidavit has been filed where it is averred that the petitioners have effective efficacious appellate remedy. Paragraph 5 in the affidavit reads thus:-

> "5. I say that the order of the Competent Authority is an appeal-able order which could be challenged before the Appellate Tribunal for forfeited properties at Delhi. The petitioners have already filed the appeal bearing No.FPA/BOM/14/2005 before the ATFP on 06.05.2005, therefore on the same ground petition may please be dismissed in limini."

2. In view of the fact that the appellate remedy is available to the petitioners, all contentions raised in this petition, which are disputed questions of facts, can be raised before the appellate authority. That being the situation, leaving appellate remedy open to the petitioners, the petition is dismissed.

3. Interim order granted earlier to continue for a period of two weeks from today.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)